IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1330 OF 2006

Metal Box India Ltd. ... Petitioners

V/s

M/s. S.F. Engineer & anr. ... Respondents

Mr. A.K. Abhyankar i/by M/s. D.H Law Associates for the petitioners.

Mr. Kirit Mehta with A.Z. Mookhtiar for respondent No.1.

CORAM: P.V. KAKADE, J.

DATED: 20TH MARCH, 2006

P.C.:

1. Heard learned counsel for both parties. Perused the record.

2. The petition is aimed against the order passed by the lower appellate Court in Revision No. 9 of 2005 in Interim Notice No. 207 of 2004 in T.E. & R. Suit No. 153/165 of 2001.

3. The petitioners who are the tenant, had challenged the legality and correctness of the order passed on 7.9.2004 in T.E. & R. Suit No. 153/165 of 2001

whereby his notice under Order 6 Rule 17 of the C.P.C. for amendment of the written statement came to be discharged with rejection of the plea.

4. The respondents landlord had terminated the tenancy of the petitioner by notice dated 19th Dec., 2000 and filed the suit for recovery of possession under Sec. 41 of the Presidency Small Causes Act.

The defendant resisted the suit by filing the written statement. Issues were framed and suit was ready for hearing. At that stage, by way of amendment, petitioners came with an application seeking amendment of the plea that the respondents had filed another suit bearing Suit No. 45/82 of 1997 for the same reliefs which were claimed in the present suit. The suit was based on termination of tenancy notice dated 19.1.1989. The petitioners claim that they had vested right within the meaning of new Maharashtra Rent Control Act, 1999 and these rights were specifically protected by new Act and that protection continues so long as the petitioner continue to occupy the suit premises. It was further submitted that two suits for the same relief are not maintainable. It was also pleaded that tenancy was terminated by notice dated 19.1.1989 and, therefore, the

suit was barred by limitation. It was also contended that by issuance of second notice, first notice is waived.

5. The respondent landlords inter-alia denied the allegations holding that no amendment was required as the notice taken out by the petitioners was for order directing the respondents to elect between the two suits. The notice was already dismissed on 5.11.2000 and similar application of the petitioners was also discharged by order dated 7.1.2004. Therefore, it was submitted that the amendment was inconsistent with the written statement. It was further pleaded that in view of the provisions of the new Act, the respondents were entitled to terminate the tenancy and file the suit under Sec. 41 of the Presidency Small Causes Court Act. Another suit was filed under the Bombay Rent Act, 1947 and it was saved by Sec. 58 of the Maharashtra Rent Control Act, 1999. Therefore, the notice was sought to be discharged.

6. The learned Trial Judge, after hearing both sides, was of the view that the amendment should not be granted and notice came to be dismissed.

7. The revision was preferred against the said order. The revisional Court, after hearing both parties, concurred with the findings recorded by the Trial Court holding that the impugned order was not maintainable and on merits also the order passed by the Trial Court was held to be legal and proper.

8. At the outset, it may be noted that, on perusal of the orders passed by both the Courts below, concurrent findings are recorded to the effect that the amendment is neither consistent with the earlier pleadings nor are necessary and, as such, the plea for amendment of the written statement was rejected. It was also held that the application seeking such amendment was not bonafide and on technical ground as well as on merits the application was held to be not maintainable.

9. It appears from the record that the revisional Court relied upon the Division Bench ruling of this Court in the case of **Sukhdev Prasad Raghubir v/s Rambhujarai Kshampati, reported in 1983 Mh.L.J. 9,** wherein it was held that the revision under Sec.29 (3) of the Bombay Rent Act, 1947 is the provision similar to Sec.42(4) of the Presidency Small Causes Court Act and held that the order rejecting the application for amendment is

procedural order not affecting substantive rights and, therefore, the revision is not maintainable and mere interlocutory or procedural orders are not orders which could be taken up and challenged in revision under Sec. 29(3) of the Rent Act. My attention was also invited to the unreported judgment of the Single Judge of this Court in set of writ petitions in **Writ Petition No. 5667 of 2003 alongwith two other petitions,** wherein it was held that there was no need for the landlord to adopt one or the other proceeding to the execution of the other of the two suits filed under the Bombay Rent Act filed on two different grounds and, therefore, it cannot be said that the cause of action for filing two suits under the Bombay Rent Act were the same and, as such, both suits are liable to be continued independently. If we follow the ratio laid down by the Single Judge in the said writ petitions, there is no doubt whatsoever that no amendment is required to be made and I am satisfied that this is not the case for interference in writ jurisdiction contemplated under Art. 227 of the Constitution of India.

In view of this position, the petition stands dismissed with no order as to costs.

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